88-547

No. ———

Supreme Court, U.S.
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CLERK

In The
Supreme Court of the United States
October Term, 1988

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RICHARD WATTS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

———o———

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

———o———

CHRISTOPHER H. WING, APC
1101 E Street
Sacramento, CA 95814
(916) 441-4888

Attorney for Richard Watts, Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

I. Whether a defendant has standing to object to a search of residence where he is present during the search, has a room in the residence in which he occasionally resides and stores personal property, and the Government conceded that there was a legitimate expectation of privacy.

II. Whether a motion to suppress should be granted where investigation conducted after the issuance of a search warrant establishes that the place to be searched does not contain the evidence sought to be seized.

III. Whether a motion to suppress should have been granted where the defendant presents a prima facie case that the search warrant affidavit contains misstatements and/or omissions resulting from a reckless disregard of the truth by the search warrant affiant and the inaccuracies are material to the probable cause finding.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, RICHARD WATTS, requests that a Writ of Certiorari be issued to review the Judgment of the United States Court of Appeals for the Ninth Circuit in United States v. Richard Watts.

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OPINION BELOW

The opinion of the Court of Appeals affirmed the conviction and sentence of petitioner and is officially reported at 848 F.2d 134 (9th Cir. 1988). A copy of the opinion is attached as Appendix A.

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STATEMENT OF JURISDICTION

On June 2, 1988, the Court of Appeals entered judgment affirming the conviction of petitioner for possession of methamphetamine with intent to distribute. On July 26 his petition for rehearing and suggestion for rehearing en banc was denied (Appendix B). This Court's jurisdiction to review the judgment of the Court of Appeals is conferred by 28 USC 1254(1).

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FEDERAL RULES INVOLVED

Constitution of the United States of America, Fourth Amendment.

STATEMENT OF THE CASE

Petitioner was charged with conspiracy and possession of methamphetamine with intent to distribute. After his motion to suppress evidence obtained by two search warrants was denied he pleaded guilty to possession of methamphetamine with intent to distribute. His appeal was confined to issues concerning the propriety of the trial courts denial of his motion to suppress evidence.

SUPPLEMENTAL STATEMENT OF FACTS

The affidavit for the search warrant for 101 Patton Court, Folsom, California set forth the affiants belief that based upon his personal conversations between the 29th of May, and the 5th of June, 1986 Bell could obtain additional quantities of methamphetamine at any time. After having procured the search warrant on June 9, on that date and on the 10th and 11th of June the affiant attempted to set up a two ounce purchase, but was told by Bell that her connection was out of product. She had another connection which the agent eschewed. Between the 9th and the 16th of June the only information that the affiant received was that Bell's connection was not in possession of drugs.

Petitioner RICHARD WATTS, evidenced his expectation of privacy in the 101 Patton Court residence by showing that he had been a business partner of codefendant Buxton for two to three years; that because of his work in the Sawyer's Bar area, California that he frequently is away from home and when in Sacramento stays at the 101 Patton Court residence; that he has a key to said residence, his own room and stores clothes and other personal effects in that room; that he has access to the vehicles at the residence and the ability to exclude anyone other than Mr. Buxton from said residence; and that he was present in the residence at the time of the execution of the search warrant.

The informant, Hicks, in the Rainbow Mine search warrant told law enforcement agents while he was in prison in June of 1985 that in September of 1984 he had gone to Redding, California to meet with Buxton to pick up methamphetamines and Buxton had told him he had to meet Watts at the "Gold Mine" to pick up the methamphetamine. Buxton left and returned approximately three hours later with methamphetamine, some of which he gave to Hicks.

The affiant, who was familiar with the Sawyer's Bar area, knew that the driving time between Redding and the Mine was approximately six hours. The affiant also had personally conducted an aerial surveillance of the Rainbow Mine Property on November 19, 1985 and did not see any vehicles known to be utilized by either of the defendants, and in fact had had them under surveillance earlier that month in Sacramento.

Tammy Bennett filed a declaration with the District Court in which she stated that she had never been on the Rainbow Mine property and had never told anyone that she had been at the mine or that she observed a clandestine drug laboratory there.

Just prior to the June 1985 meeting, between the DEA agents and Mr. Hicks in Prison, he had been interviewed by members of the Sacramento County Sheriff's Office who reported that Hicks "told many lies and inconsistencies concerning the activities of Buxton and others in an attempt to get out of jail".

———o———

REASONS FOR ALLOWANCE OF THE WRIT

I

PETITIONER WATTS HAD A REASONABLE EXPECTATION OF PRIVACY IN 101 PATTON COURT, FOLSOM, CALIFORNIA.

Like the situation in *Steagald v. United States* 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981), there was no argument made by the Government that petitioner WATTS lacked standing in the trial court. The theory of the prosecution was that he constructively possessed the methamphetamine for which he was convicted, which was seized from the Patton Court residence. Upon the submission of the petitioner's affidavit, the Government conceded a reasonable expectation of privacy and that is how the matter stood until the court of appeals, without being urged to do so, held that petitioner did not have standing to object to the search.

II

THE DECISION HEREIN CONFLICTS WITH FUNDAMENTAL FOURTH AMENDMENT PRINCIPLES AND PARTICULARLY WITH THE DECISION OF THE SECOND CIRCUIT COURT OF APPEALS IN UNITED STATES V. MARIN-BUITRAGO, 734 F.2d 899 (2nd Cir. 1984).

As has been eloquently noted elsewhere, probable cause to arrest and probable cause to search are not identical in all respects. *Zurcher v. Stanford Daily* 436 U.S. 547, 556, 98 Sup.Ct. 1970, 1976, 56 Law Ed. 2d 525 (1978).

It is equally axiomatic, that probable cause for a location named in a search warrant may exist at a point in time but become "stale" after the passage of time. This court first confronted the issue of staleness in a rather unusual way in the case of *Sgro v. United States* 287 U.S. 203, 53 Sup.Ct. 138 (1932). There, a search warrant was obtained to search a hotel for illegal intoxicants on July 6, but the warrant was not executed until July 27 at which time it was reissued on the basis of the same affidavit. This court, holding the search under the reissued warrant was unlawful reasoned:

> [w]hile the statute does not fix the time within which proof of probable cause must be taken by the judge or commissioner, it is manifest that the proof must be of facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time . . . the new warrant must rest upon a proper finding and statement by the commissioner that probable cause then exists. The determination, as of that time, cannot be left to mere inference or conjecture.

Probable cause is not determined merely by counting the number of days between the time of the facts relied upon in the warrant and its issuance, but rather depends upon the likelihood that the evidence sought is still in place. Probable cause to search is a function not simply of time but of other variables that are not subject to time limitations such as the character of the crime, the things to be seized, and the place to be searched.

This is the precise issue which the Second Circuit Court of Appeals dealt with in *United States v. Marin-Buitrago,* supra. There, the court forcefully noted that the safeguards placed upon the execution of search warrants is not only to insure the probable cause continues to exist but also that a neutral magistrate, not the executing officer, determines whether or not the probable cause continues to exist. *Marin-Buitrago* at 894, citing *Franks v. Delaware* 438 U.S. 154, at 165 (1979):

> When a definite and material change has occurred in the facts underlying the magistrates determination of probable cause, it is the magistrate, not the executing officer, who must determine whether probable cause still exists. Therefore, *the magistrate must be made aware of any material new or correcting information.* (Emphasis added).

The court cautioned that this reporting requirement does not arise unless the information is material to the magistrate's determination of probable cause. The issue of materiality was found to be a "mixed question of law and fact". *Id.* Unfortunately, the Court of Appeals in this case did not even reach the particular issue.

It is submitted that the issue herein as to whether or not probable cause continued to exist at the time of the

execution of the warrant is clearly a mixed question of law and fact. Without explanation however, the Ninth Circuit now appears to permit a law enforcement officer to obtain the search warrant based upon probable cause and thereafter conceal from the issuing magistrate any events which take place following the issuance and before it's execution. Clearly, such a ruling is contrary to the most basic fundamental constitutional principles which have developed from the Fourth Amendment.

III

THE COURT SHOULD HAVE ALLOWED AN IN CAMERA HEARING CONCERNING THE RELIABILITY OF THE INFORMANT WHO RELATED THE INFORMATION FROM TAMMY BENNETT TO LAW ENFORCEMENT AND FURTHER SHOULD HAVE GRANTED AN EVIDENTIARY HEARING PURSUANT TO FRANKS V. DELAWARE, 438 U.S. 154, 98 Sup.Ct. 2674 (1979).

In his request to the court for an in camera hearing concerning the reliability of the informant, the petitioner not only provided a denial under oath by the person alleged to have made the statement, he also provided the court with information that the affiant himself had knowledge based upon his own senses to suspect the informants allegations were false. This prima facie showing mandated a hearing in the District Court.

Further, the District Court was presented with sufficient evidence that was omitted from the affidavit for search warrant number 86-411(a) [The Rainbow Mine Search Warrant] to mandate a *Franks* hearing.

James Hicks, discussed in the search warrant affidavit (ER 206:4-25; 207:1-25; 2081-15) had told the interviewing federal agents in June of 1985 that Buxton had informed him that when he went to pick up the contraband that WATTS was not at the site (compare ER 206:4-21 with ER 277:27-28; 278:1-3).

Prior to the interview of Hicks by the federal agents, a detective sergeant from the Sacramento County Sheriff's Office interviewed Hicks on May 31, 1985 and in his report of the interview, the detective stated that Hicks began the conversation stating he wanted to get out of jail, was willing to make a deal to get out of jail, and the only way that it would work was if he could get out of jail. Further, the Sergeant noted in his report that Hicks told many lies and inconsistencies. (ER 298; 278:4-13).

The affiant had been involved in the surveillance of Buxton since March of 1985 and the surveillance continued at least intermittently in July, August, September and November of 1985. On November 15, 1985 the affiant was aware of the fact that Buxton and WATTS, driving a white Jeep Cherokee station wagon were in the Sacramento area and that surveillance was lost on that date. On November 19, at 2:30 p.m., the affiant overflew the "Rainbow Mine" and took aerial photographs. In his report of that overflight, he mentioned that not one of the suspect vehicles were observed there, but that there were indications of recent vehicle traffic to the property. He also noted in his reports of his November surveillance of Buxton and WATTS, that they were driving either a black 1982 Mercedes Benz or a white Jeep, which has earlier been described, and that there was no indication of either

subject or vehicle in the vicinity of the Rainbow Mine on November 19, 1985. (ER 278:19-28; 279:1-5).

Tammy Bennett who was noted in the affidavit (ER 313:1-8) denied ever being to the Rainbow Mine, denied ever witnessing a large drug transaction at the Rainbow Mine, and denied stating to anyone that she had observed a large transaction take place at the Rainbow Mine. (ER 267-268).

The affiant stated that he was personally familiar with the location of the Rainbow Mine (ER 211:14-17) and thus must have known that it is impossible to go from Redding to the Rainbow Mine and back within the space of three hours. (ER 265-266).

The affiant did not dispute the fact that it is impossible to drive roundtrip from Redding to the Rainbow Mine and back in six hours; he did not deny that he was aware of general information regarding Hicks being a reputed liar, wanting to make a deal, and giving inconsistent statements in the past; nor is there any denial by the agent who specifically interviewed Hicks and gave that information to the affiant that he was not aware of this information.

The foregoing facts seem to place these issues in the context of *United States v. Dorfman* 542 F.Supp. 345 (N.B.Ill 1982) aff'd sub nom. *United States v. Williams* 737 F.2d 594 (7th Cir. 1974). *Dorfman* discusses the fact that even if the law is settled that an informant lying to an officer who had no reason to believe he was not telling the truth does not constitute grounds for a *Franks* hearing, that when one officer misleads another officer, who then includes that information in an affidavit, a hearing is

required. See also *United States v. Pritchard* 745 F.2d, 1118-1119 (7th Cir. 1984).

As the affidavit in support of the Rainbow Mine warrant relied primarily on informant allegations, and as a prima facie case of material, reckless misstatement and/or omission was presented petitioner was entitled to either an evidentiary hearing or an order granting his motion to suppress.

CONCLUSION

For the foregoing reasons, it is respectfully submitted this court should issue a writ of certiorari to review the decision of the Court of Appeals.

Dated: September 23, 1988

Respectfully submitted,

CHRISTOPHER H. WING,
A Professional Corporation
Attorney for Petitioner
Watts

APPENDIX A

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*	No. 87-1228
v.	D.C. No. CR-86-0142-RAR
RICHARD WATTS, *Defendant-Appellant.*	
UNITED STATES OF AMERICA, *Plaintiff-Appellee,*	No. 87-1229
v.	D.C. No. CR-86-0142-RAR
LLOYD RAY BUXTON, *Defendant-Appellant.*	OPINION

Appeal from the United States District Court
for the Eastern District of California
Raul A. Ramirez, District Judge, Presiding

Argued and Submitted
May 9, 1988—San Francisco, California

Filed June 2, 1988

Before: M. Oliver Koelsch, John T. Noonan, Jr. and Diarmuid F. O'Scannlain, Circuit Judges.

Opinion by Judge Noonan

SUMMARY

Criminal Procedure

Appeal from drug convictions. The court affirmed holding that under the evidence, a *Franks* hearing was not required regarding the affidavits supporting the search warrants.

A search warrant issued for 6509 Briartree Way and for 101 Patton Court (appellant "Ray" Buxton's residence) authorizing a search for methamphetamine and paraphernalia. The search warrant was based on the affidavit of Seminoff, a special agent with substantial experience in drug enforcement. He stated that a confidential informant told him that Bell, a resident of 6509 Briartree Way, was dealing in methamphetamine and that her source was one "Ray" who resided at River Edge and Patton Court. Seminoff purchased methamphetamine from Bell on two occasions under police surveillance. On these facts, the search warrant issued. Seminoff executed it 13 days after receiving it. Methamphetamine was found at 101 Patton Court. Also on the premises was appellant Watts. After his arrest, a search warrant issued for a search of the Rainbow Mine. The warrant was issued on the basis of an affidavit by Till, another special agent. According to Till, special agent Margarita had been told by DeSilva that she and her partner, Ray Buxton, were in a business in which she got chemicals and made lots of money. A confidential informant told Margarita that DeSilva had told the informant that it was made in Sawyers Bar, California by Watts. The Rainbow Mine was recorded as owned by Richard and Rita Watts. The warrant issued on these facts.

[1] Nothing material was omitted from Seminoff's affidavit. Only one Ray was connected by Seminoff's confidential informant with 101 Patton Court. The whole argument about the three Rays of Bell is an exercise in obfuscation. [2] The fact that her supplier did not have the stuff on hand did not render stale the information that her supplier had provided the drug for the two controlled buys by Seminoff. [3] Watts has no standing to object to the first search warrant.

COUNSEL

Malcolm S. Segal, and Robert M. Wilson, Segal & Kirby, Sacramento, California, for the defendant-appellant Lloyd Ray Buxton.

Christopher H. Wing, Sacramento, California, for the defendant-appellant Richard Watts.

Dale E. Kitching, Special Assistant United States Attorney, Criminal Division, for the plaintiff-appellee.

OPINION

NOONAN, Circuit Judge:

Richard Watts appeals his conviction of possession of methamphetamine with intent to distribute in violation of 21 U.S.C. § 841(a)(1). Lloyd Ray Buxton appeals his conviction of conspiracy to distribute methamphetamine in violation of the same statute and § 846. The cases are related and are consolidated here on appeal. The principal issue in each is whether under *Franks v. Delaware,* 438 U.S. 154 (1979) a hearing should have been held as to the affidavits which secured much of the evidence that went to the convictions.

FACTS

On June 9, 1986 a judge of the Municipal Court of Sacramento issued a search warrant for 6509 Briartree Way, Citrus Heights, California and for 101 Patton Court, Folsom, California, authorizing a search for methamphetamine and paraphernalia commonly associated with its packaging for sale. The search warrant was based on the affidavit of James Seminoff, an agent of the Bureau of Narcotic Enforcement of the State of California.

Seminoff in his affidavit indicated that he had worked for a year in this role, and that for 15 years previously he had worked for the California Highway Patrol; that he had attended schools relating to the sale of methamphetamine; and that he had arrested no less than 100 persons involved in possession or sale of drugs and had investigated no fewer than eight clandestine methamphetamine laboratories. He stated that on April 30, 1986 he met a confidential informant who told him that Linda Bell, a resident of 6509 Briartree Way, Citrus Heights, was dealing in methamphetamine and that her source was one "Ray" who resided at River Edge and Patton Court in Folsom.

Seminoff then arranged for the informant to purchase methamphetamine from Linda Bell on May 28, 1986. On May 29th Seminoff went with the informant to 6509 Briartree Way and there himself arranged to buy one-half ounce of methamphetamine from Bell. Seminoff gave her $500 but she said she would have to contact her source in order to provide the one-half ounce. Also present on this occasion was one John Eagles.

Bell, Eagles and a man named Kim then left Bell's residence and were observed by police surveillance ar-

riving at 101 Patton Court, Folsom, the residence of Lloyd "Ray" Buxton. En route Bell dropped off Eagles and Kim, and she picked them up again before returning to her own place. As the affidavit made clear, surveillance was lost for an hour during the return trip. On returning, Bell told Seminoff that she had bought the methamphetamine from Ray, observing in passing, "I'm the only one who can go to his home after three years." Eagles weighed out the white powder substance. Bell repackaged it and Seminoff took delivery.

On June 3, 1986 Seminoff again visited Bell, who was with Eagles. She was paid $1,000. Surveillance followed her again to 101 Patton Court, Folsom. En route she again dropped off Eagles and picked him up on her return. Eagles delivered the methamphetamine to Seminoff. All these facts were presented to the judge who issued the warrant.

After obtaining the warrant Seminoff did not execute it immediately, but tried to buy more methamphetamine from Bell. She said she could not obtain any now from Ray. The warrant was executed on June 16. Methamphetamine was found on the premises at 101 Patton Court.

Also on the premises at 101 Patton Court was Richard Watts, who was arrested for possession of the drug. After Watts' arrest a search warrant was issued on June 18, 1986 by Esther Mix, United States Magistrate, for a search of the Rainbow Mine, Sawyers Bar, Siskiyou County, California, for methamphetamine and chemicals commonly associated with its manufacture, packaging or transport and for records of customers and other documents tending to establish a conspiracy in regard to the drug. The war-

rant was issued on the basis of an affidavit by Stuart E. Till, another special agent for the California Bureau of Narcotic Enforcement with substantial experience in drug enforcement.

According to Till, in January 1985 a special agent of the DEA, Richard P. Margarita, working under cover had been told by Kathy DeSilva that she and her partner, Ray Buxton, were in a business in which she got chemicals and made lots of money. The same month a confidential informant told Margarita that DeSilva was involved with Buxton in the distribution of methamphetamine and that DeSilva had told the informant that it was made in Sawyers Bar, California by Richard Watts. In February and March 1985 Till had observed the pick up of chemicals ordered by Buxton in Seattle and their transport to Sacramento; Buxton and Watts had met the driver on arrival in Sacramento. The driver, one James Hicks, said in prison in June 1985 that in 1984 Buxton had sold him methamphetamine. Hicks went on to say that in 1985 he had picked up chemical precursors for Buxton in Louisville, Kentucky, ultimately delivering them at Buxton's direction to the Coeur d'Alene area.

Till further stated that on June 16 during the execution of the search warrant at 101 Patton Court a woman called Sue telephoned and told the agent who answered to tell Dick Watts she was driving up to the Rainbow. Watts' wife's name was Sue. The Rainbow Mine was located in Sawyers Bar. Putting these facts together, Till further learned that during a drug investigation by the sheriff of Siskiyou County in December 1985, a confidential informant had said that one Tammy Bennett on November 19,

1985 saw a large drug deal take place at the Rainbow Mine and knew that there was a secret drug laboratory there. The Rainbow Mine was recorded as owned by Richard and Rita Watts.

Till added that the methamphetamine found at Buxton's appeared to have been recently manufactured and that on the basis of the information he had gathered about Buxton's purchases that Buxton had bought enough phenylactic acid to make at least 1,800 pounds of pure methamphetamine. At the wholesale price of $12,000 per pound, he would be able to sell this amount for $21 million. The warrant issued on these facts.

ISSUES

1. Buxton challenges the warrant for 101 Patton Court on the ground that Seminoff did not disclose that Bell knew two other people named Ray besides himself. One was a man named Raymond George Foot who once resided at Briartree Way and dealt in narcotics and stolen property. The other was John Eagles whose middle name was Raymond and was sometimes known in drug circles as Ray.

2. Buxton further asserts that the warrant was defective because the surveillance of Buxton's residence which had been going on as far back as July 1985 had led to nothing which would support the belief that Buxton was Linda Bell's supplier.

3. Finally, Buxton contends that the agent had a duty to inform the magistrate after the issuance of the warrant that Bell now was telling him that her source had no methamphetamine. This negative statement of Bell, ac-

cording to Buxton's argument, led to "the evaporation of probable cause."

4. Watts challenges the Patton Court search and additionally challenges the Rainbow Mine search. The bases for the latter challenges are several: that the unreliability and possible motive of Hicks were not noted in the affidavit; that no mention was made that aerial surveillance of the Rainbow Mine on November 19, 1985 had not indicated any vehicles connected with Buxton or Watts; that Tammy Bennett later denied the statements attributed to her.

ANALYSIS

[1] Nothing material was omitted from Seminoff's affidavit. Only one Ray was connected by Seminoff's confidential informant with 101 Patton Court. There was no reason for Seminoff to tell the magistrate about another Ray who had lived with Linda Bell at another time. There was no reason for Seminoff to mention that John Eagles' middle name was Raymond, although that fact does appear at one point in the information supplied to the court issuing the warrant. Seminoff had never heard him referred to as Ray. Eagles, moreover, was present with Bell when she said to Seminoff she had to contact her source. As Eagles' participation in the deals was not being hidden from Seminoff there was no reason to think that in a roundabout way Bell was getting a supply from him when she dropped him off and went on to 101 Patton Court, Ray Buxton's residence. The whole argument about the three Rays of Linda Bell is an exercise in obfuscation.

[2] There was no need to state a negative finding of no activity at Buxton's when the surveillance of Linda Bell

had paid off by pointing to positive activity. There was also no need to report the sudden drying up of Linda Bell's source after June 9. The fact that her supplier did not have the stuff on hand did not render stale the information that her supplier had provided the drug for the two controlled buys by Seminoff. In short, counsel for Buxton strain very hard to make anything like a presentable case. Their strained efforts fall far short of being persuasive.

[3] As to Watts, he has no standing to object to the first search warrant. As to the Rainbow Mine, he, like Buxton, seems to think that investigators have to report non-evidence along with evidence. Obviously in any investigation there will be probes that yield nothing. When strong probative evidence of criminal activity is uncovered, there is no point in reporting unproductive surveillance. Innocent activity does not disprove the observed evidence of criminal conduct.

The information from Hicks in Till's affidavit played a relatively small part. Knowing that Hicks was in jail, Magistrate Mix could make her own estimation of his motives and credibility. As for the retraction of Tammy Bennett, that came after the arrests and obviously has no bearing on the belief with which Till inserted a reference to her story in his affidavit. Till's affidavit, like Seminoff's, provided a substantial basis for the judicial officer issuing the search warrant to conclude that probable cause existed.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. RICHARD WATTS, Defendant-Appellant.	No. 87-1228 DC# CR-86-0142-RAR
UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. LLOYD RAY BUXTON, Defendant-Appellant.	No. 87-1229 DC# CR-86-0142-RAR ORDER (Filed July 26, 1988)

Before: KOELSCH, NOONAN, and O'SCANNLAIN, Circuit Judges

The panel as constituted in the above case has voted to deny the petitions for rehearing. Judges Noonan and O'Scannlain have voted to reject the suggestions for rehearing en banc and Judge Koelsch so recommends.

The full court has been advised of the suggestions for en banc rehearing, and no judge of the court has requested

a vote on the suggestions for rehearing en banc. Fed. R. App. P. 35(b).

The petitions for rehearing are denied, and the suggestions for a rehearing en banc are rejected.